

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

In re application of: Robert John Colver
Serial No. 09/601,810
Filed August 3, 2000
Group Art Unit: 3637
Examiner: C. Nguyen
For: MODULAR BUILDING UNIT

May 23, 2006

Docket No. 1518.005

Commissioner for Patents
US Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF ON APPEAL

Sir:

This brief is being submitted in triplicate to The Board of Patent Appeals and Interferences in support of the Appellant's appeal from the Examiner's Answer dated March 23, 2006.

There are no appeals, interferences, or other judicial proceedings known to Appellant or to Appellant's representative (the undersigned) which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

All of the pending claims are the subject of this appeal.

The Appeal claims are rejected on the basis of Payne U.S. Patent 573569 in view of Bowers' U.S. Patent 3605350.

The analysis of both references is focused on the structures they disclose rather than the methods they disclose for making those structures. This is a fundamental flaw in the rejection. For the rejection to be valid, the claimed method must be taught by Payne in combination with Bowers. However, it simply is not.

Specifically, with respect to Payne, this discloses that the module 30 is constructed by first forming each of the base assembly 32, right side wall 36, left side wall 38, front wall 40, rear wall 42 and roof assembly 44. Next the corner support members 128, 130, 132 and 134 are connected to the corner fittings 56 of the base assembly 32. The roof

assembly 44 is then attached by connecting its corner fittings 282 to the corner support members 128, 130, 132 and 134. The right side wall 36, left side wall 38, front wall 40 and rear wall 42 are then connected in place by welding them to the base assembly 32, roof assembly 44 and corner support members 128, 130, 132 and 134.

This method of construction does not show, suggest or disclose the pending claimed method steps. In particular, it does not involve vertically positioning at least three rectangular frame members in a row and then connecting together of the rectangular frame members by internal horizontal runners. There is nothing in the prior art references suggesting such a method of assembly.

The omission of those steps are not addressed in the Grounds of Rejection. Instead, in the Grounds, the Examiner states that in bracing a wall form, one must "obviously" position two opposite side walls, secure to the corner elements and connect to roof and floor frames. That "obvious" method involves using two opposite side walls, not vertically positioning at least three rectangular frame members and then connecting them together with internal horizontal runners. Therefore, by the Examiner's own admission the obvious method of the prior art is not the claimed method.

Furthermore, in the Response to Argument, the feature of assembling at least three substantially similar rectangular frame members is dismissed on the basis that the final structure depicted in Payne has at least three rectangular frame members. However, this ignores the fact that Payne does not teach first forming three rectangular frame members, then setting them up vertically spaced from one another and then connecting them together by horizontal runners. The method of construction of Payne is quite different and does not involve those steps as the Examiner concedes in his reply.

The Examiner further concedes that Payne does not disclose a plurality of horizontal runners parallel to each other but relies on Bowers for this. However, again the Examiner has looked at the final structure disclosed in Bowers and has not properly considered the teaching of Bowers as to the method for constructing how that structure is made.

Specifically, the Examiner has overlooked that Bowers specifically teaches forming the open-sided module of Figure 2. The closed module of Figure 1 is then formed only by connecting together two modules as shown in Figure 2.

Thus, the Examiner has not responded to the applicant's argument that Bowers teaches away from a method for forming a lattice framework because it discloses a module with an open side. The Examiner has not properly considered the teaching of Bowers.

In assessing both Payne and Bowers, the Examiner has simply looked at the final structures and not considered the teachings of those references with respect to the methods of forming the structures. If he had done so he would have found that the teachings are inimicable and the skilled person simply would not have arrived at the claimed method on the basis of them.

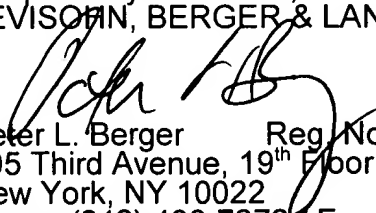
As the Examiner has himself said in the Grounds, indeed the method of assembly in the prior art is the obvious method of construction comprises forming two side walls. It does not comprise forming at least three rectangular frame members and connecting them with internal horizontal members. The benefits of this method are amply described in the specification and file wrapper, each from four individual frame sections as claimed in Claim 45.

In view of the above and in view of the file in this matter, the current rejection of the method claims should be reversed.

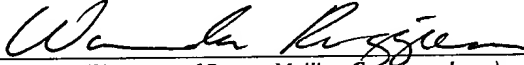
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Dated: May 23, 2006

Respectfully submitted,
LEVISON, BERGER & LANGSAM, LLP

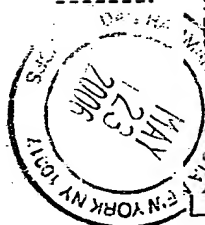


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Invention: MODULAR BUILDING UNIT				
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